

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOHN COSBY,

Plaintiff,

9:10-CV-0595 (TJM/DEP)

v.

COLLEEN RUSSELL, *et al.*,

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to the Report-Recommendation and Order dated November 20, 2012 have been filed, and the time to do so, including the extension that was granted, has expired. Furthermore, after examining the record, the Court has determined that the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopts the Report-Recommendation and Order for the reasons stated therein.

It is therefore,

ORDERED that defendants' motion to dismiss (Dkt. No. 41) is GRANTED as to plaintiff's failure-to-intervene claims against defendants Pritchard and Rich and his

excessive-force claim against defendant Russell, and that those claims are DISMISSED with leave to replead within thirty (30) days of the signing of this Decision and Order; and it is further

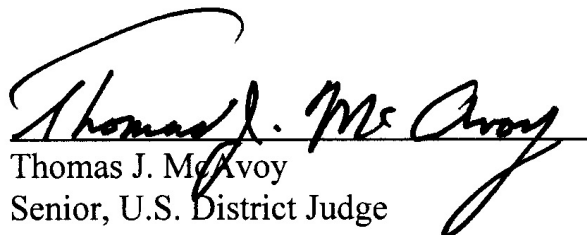
ORDERED that defendants' motion to dismiss is GRANTED as to plaintiff's New York Human Rights Law claim against defendants Hayes, Pritchard, Rich, Kline, and Russell, and the claim is DISMISSED with prejudice; and it is further

ORDERED that defendants' motion to dismiss is GRANTED as to plaintiff's New York State Patients' Bill of Rights claim against defendants Hayes, Pritchard, Rich, Kline, and Russell, and the claim is DISMISSED with prejudice.

Based upon the above, plaintiff's failure-to-intervene claim against defendants Hayes, Kline, and Russell is the only claim to survive defendants' motion to dismiss. If plaintiff elects to re-plead the claims for which he has been granted leave, he must do so within thirty (30) days of the date of this Decision and Order, and he must file a complete pleading that will supercede the former in all respects (*i.e.* allegations or claims made in a prior pleading cannot be incorporated by reference).

IT IS SO ORDERED.

Dated: March 11, 2013


Thomas J. McAvoy
Senior, U.S. District Judge